

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

PRECISELY SOFTWARE  
INCORPORATED,

Plaintiff,

v.

LOQATE INC.,

Defendant.

AND RELATED COUNTERCLAIMS

Case No. [22-cv-00552-BLF](#) (VKD)

**ORDER RE MAY 3, 2023 DISCOVERY  
DISPUTE**

Re: Dkt. No. 70

This dispute concerns defendant and counter-claimant Loqate Inc.’s (“Loqate”) document requests to plaintiff and counter-defendant Precisely Software Incorporated (“Precisely”). Dkt. No. 70. The Court finds this matter suitable for resolution without oral argument. Civil L.R. 7-1(b).

Loqate and Precisely<sup>1</sup> are parties to a license agreement pursuant to which Precisely is licensed to integrate Loqate’s software and data into Precisely’s products. *See* Dkt. No. 70 at 1. According to the terms of the agreement, Precisely must pay fees to Loqate based on Precisely’s customers’ use of Loqate’s data. Precisely has the option to pay a fixed fee for its customer’s use of Loqate’s data (assuming that use complies with the agreement’s requirements for a fixed fee), or to pay a per transaction fee for such use. *Id.*; *see also* Dkt. No. 52 at 1-2.

Precisely alleges that for its customer Kering Italia S.P.A. (“Kering”), it paid Loqate on both a fixed fee basis and a per transaction basis in 2019 and 2020, resulting in an overpayment.

<sup>1</sup> Precisely has assumed the rights and obligations of its predecessor, Pitney Bowes Software, Inc., under the agreement. For convenience, the Court refers only to Precisely.

1 Loqate has refused to refund the overpayment. Precisely filed a complaint against Loqate to  
2 recover the overpayment. Dkt. No. 31.

3 Loqate denies that Precisely overpaid the fees for Kering. Dkt. No. 55. In addition,  
4 Loqate filed a counterclaim against Precisely for breach of contract, breach of the implied  
5 covenant of good faith and fair dealing, and for a declaration of the parties rights and obligations  
6 under the license agreement. Dkt. No. 56. Loqate's counterclaim allegations are very general, but  
7 its first two claims appear to be based on the contention that Precisely reported incorrect and  
8 inaccurate usage of Loqate's data, and paid a fixed fee for that use, even though its customers' use  
9 of Loqate's data did not comply with license agreement, which required Precisely to pay on a per  
10 transaction basis. *See id.* ¶¶ 1, 20, 23; *see also* Dkt. No. 70 at 2. In fact, Loqate contends that  
11 because Precisely improperly paid on a fixed fee basis for Kering, Precisely has substantially  
12 *underpaid* Loqate for data for that customer in subsequent years. Dkt. No. 56 ¶ 20.

13 Loqate served document requests essentially asking Precisely to produce documents  
14 detailing the use of Loqate's licensed software and data by all of Precisely's customers from 2018  
15 to the present. Dkt. No. 70 at 2; Dkt. No. 70-1. Precisely has agreed to produce non-privileged  
16 documents responsive to Request for Production ("RFP") 1, but objects to producing any  
17 documents responsive to RFPs 2-10, beyond those relating to its customer Kering. Dkt. No. 70 at  
18 2, 6.

19 The Court agrees with Loqate that discovery is not limited to Precisely's complaint and  
20 Loqate's defenses specific to Kering; Loqate's counterclaims are broader than the claims in  
21 Precisely's complaint. However, Loqate's counterclaims contain no allegations suggesting that its  
22 dispute with Precisely goes beyond those licensed customers for whom Precisely has been paying  
23 Loqate on a fixed fee basis, instead of on a per transaction basis.

24 Accordingly, the Court adopts Precisely's alternative proposal for resolution of this  
25 dispute: Precisely's obligations to respond to RFPs 2-10 are limited to Precisely's fixed-fee  
26 customers. *See id.* at 6. Precisely shall produce all non-privileged documents responsive to RFPs

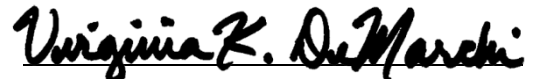
27 ///

28 ///

1-10 by **June 16, 2023**, unless the parties agree otherwise.

**IT IS SO ORDERED.**

Dated: May 25, 2023

  
VIRGINIA K. DEMARCHI  
United States Magistrate Judge

United States District Court  
Northern District of California